

By What Authority?

For Lawyers

*A Reading for Those Who Work With Authority and Want to Know Where It
Comes From*

By What Authority? — For Lawyers

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The chain

In law, authority traces a chain. A court decision binds because it follows from statute, which binds because it was passed by a legislature with recognised constitutional authority, which has authority because of an act of foundation, which has authority because — and here the chain either terminates in a legitimate founding act or in something else.

In the constitutional law of settler colonies — Australia, the United States, Canada, New Zealand — the chain of sovereignty traces through a sequence of instruments that have been examined in constitutional law, but rarely all the way back to their foundation.

Johnson v. M'Intosh (1823) is the United States Supreme Court decision that incorporated the Doctrine of Discovery into common law. Chief Justice Marshall held that the act of European “discovery” of a territory conferred on the discovering Christian power the exclusive right to extinguish native title by purchase or conquest. The right of the “original inhabitants” was diminished to a right of occupancy. Sovereignty vested in the discovering crown.

The Doctrine of Discovery traces to two primary papal bulls: *Romanus Pontifex* (Nicholas V, 1455) and *Inter Caetera* (Alexander VI, 1493). These instruments granted to Portugal and Spain respectively the right to seize non-Christian territories and subjugate their peoples. *Inter Caetera* did this explicitly in the name of the Holy Catholic Faith and the authority of the Roman See.

Australian constitutional law absorbed the same doctrine through the royal prerogative. It was not tested directly in domestic courts until *Mabo v. Queensland (No. 2)* (1992), which recognised native title while affirming Crown sovereignty. What *Mabo* did not reach was the foundational question: by what authority did the Crown acquire sovereignty over inhabited territories without treaty or consent? That question traces through the bulls to the

church's claim to speak with divine authority on temporal matters — a claim that rests, at its textual foundation, on specific passages in Paul's letters.

A precedent: the Irish case

Before Romanus Pontifex, before Inter Caetera, there was a smaller and less-examined instrument that established the model.

Laudabiliter is a papal bull attributed to Adrian IV, dating to approximately 1155. It granted Henry II of England the right to invade Ireland, reform its church, and assert lordship over it. The grant was made on the authority of the Holy See, on the grounds that Ireland's church needed to be brought into conformity with Rome. The language is instructive: Adrian grants Henry the right to enter Ireland "for the purpose of enlarging the boundaries of the Church, restraining the progress of wickedness, reforming evil customs and manners, planting virtue, and increasing the Christian religion."

Laudabiliter matters for two reasons. First, it demonstrates that the mechanism — a pope granting a Christian crown the right to invade and subordinate a people on grounds of religious reform — predates the voyages of discovery by three centuries. It was not invented for the colonies. It was a tested legal instrument being applied to a new context. Second, it demonstrates that the doctrine operated within Christian Europe as well as at its edges. Ireland was already Christian. The grant was made anyway. The theological warrant was not about paganism. It was about the church's claim to arbitrate temporal power regardless of the recipients' existing faith.

The chain that reaches Australia runs through this earlier exercise of the same mechanism. What Romanus Pontifex did for Africa and Asia, and Inter Caetera did for the Americas, *Laudabiliter* had already done for Ireland. When the later bulls were drafted, the model existed. It had been used. It was extended.

The theological warrant

Romans 13:1–7 is the passage that has done more constitutional work than any other in the New Testament: “Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God.”

This passage provided the scriptural foundation for the doctrine of divinely instituted political authority. It was cited continuously from the second century onward. In the medieval period it became the warrant for the church’s claim to act as the source and arbiter of legitimate political power — because if all authority is instituted by God, and the church mediates access to God’s will, then the church can speak to which earthly authorities are legitimate and which are not. The papal bulls are the downstream expression of this logic.

The chain is: Paul establishes that God institutes all governing authority. The church, as the body through which God’s will is known and administered, can speak to which temporal claims are legitimate. The bull is the instrument by which it exercises that function. The court incorporates the bull’s doctrine. The sovereignty claim rests on the court.

If Romans 13:1–7 is authentically Pauline, it carries whatever authority the apostolic tradition confers. If it was inserted into Paul’s letters after Paul wrote — by editors with an institutional interest in that specific conclusion — then the theological warrant for the downstream chain may rest on an instrument whose provenance has been misrepresented inside an authoritative document.

What the textual scholarship shows

Romans 13:1–7 is one of the passages the series identifies as a later addition on grounds that are specific, convergent, and of the same kind applied to any disputed documentary evidence.

Structural interruption. Romans 12:9–21 is a sustained argument about love — including instructions to feed an enemy, to overcome evil with good, not to take revenge. Romans 13:8–10 returns to the same theme directly: “Let no debt remain outstanding, except the continuing debt to love one another.” The governing-authorities passage (13:1–7) sits between these sections with no internal transition. Remove it; the argument reads without interruption. The passage leaves no gap when excised.

Patristic first citation. The passage appears first as a citation in the writings of the anti-Marcionite fathers. Irenaeus cites it in the context of defending Roman imperial authority, not in a discussion of church order. Marcion’s canon, which preceded the proto-orthodox one by a generation, did not include it. The passage is first cited by the people who had the clearest institutional interest in what it says.

Institutional context. Marcion’s communities were politically suspect — a movement that rejected the Hebrew God and therefore had no claim to the legal protections sometimes extended to Jewish communities in the empire. The proto-orthodox institution, by contrast, was attempting to establish its legitimacy before Roman authorities. A passage telling its members to submit to governing authorities was not just theologically convenient. It was politically necessary.

The same pattern — structural interruption, first citation in anti-Marcionite polemics, clear institutional usefulness — recurs across the principal passages the series identifies as later additions. The consistency is the argument.

The five core tests as an evidentiary standard

It is worth pausing on what kind of evidence this is and how it compares to other forms of documentary analysis.

In historical document analysis, authenticity is typically established through a combination of: palaeographic evidence (the physical document), provenance (the chain of custody), internal consistency (does it read as a unified document?), external attestation (do contemporary sources cite it?), and institutional context (does the document serve the interests of those who produced it in ways that would motivate fabrication?).

The five core tests the series uses as its readable summary are the analogues of these standard methods; the formal Companion A apparatus expands them into twelve signal codes. Structural interruption corresponds to internal consistency. Writing-style analysis corresponds to palaeographic analysis. Patristic citation records correspond to external attestation. Institutional usefulness corresponds to motivation analysis. Theological direction corresponds to the kind of internal bias analysis that courts apply when evaluating documents produced by parties with an interest in the outcome.

No document historian applying these standards to, say, a disputed medieval charter would refuse to use them because they were being applied to a text with religious significance. The religious significance of the text does not exempt it from evidentiary scrutiny. It is, if anything, a reason to apply that scrutiny more carefully, because the consequences of the text having been fabricated are more serious.

The oath architecture

Volume 3 of this series examines what it calls the oath architecture — the layered system of sworn obligations that binds institutional actors to the sovereignty chain at each level.

At the foundation, the sovereign's authority is established through the chain of instruments. Above that, the constitutional instruments incorporate that authority into domestic law. Above that, every judicial officer swears to uphold the constitution. Every officer of the court is admitted under obligations to a court of the sovereign. Every public servant, military officer, and naturalising citizen swears an oath to the Crown.

The oath architecture is part of how a foundational question, once left unexamined, maintains itself. Each person who swears in does so genuinely. Their oath is real. But it binds them to an authority whose foundational claim they have not been invited to examine, and the structure of the oath creates institutional pressure against examination. A judge who has sworn to uphold the constitution cannot, in the act of judicial decision-making, step outside the constitution and interrogate the legitimacy of the authority that grants it. This is how a constructed foundation reproduces itself across generations: not by being defended, but by being assumed.

Following the chain all the way back

In any other evidentiary context, tracing a chain of title all the way back to its foundation is standard practice. If a foundational instrument rests on a defective authority — a fraudulent grant, a forged power of attorney, a statute that has been misrepresented — the defect does not automatically void the downstream instruments. But it must be disclosed, examined, and addressed.

The sovereignty chain of settler colonies has not been followed to its foundation with that standard of scrutiny. The papal bulls are cited in the case law. The theological warrant behind the bulls is not examined. The provenance of that warrant — the apostolic authority the bulls claim — is not examined. The authenticity of the specific Pauline passage that underpins that authority is not examined.

When it is, the chain may not terminate where it claims to terminate. On the argument developed in the full series, it terminates in a passage inserted into an authoritative document by people with a specific institutional interest in the conclusion that passage provides.

The series is not arguing that *Johnson v. M'Intosh* or the constitutional settlement of Australia is automatically void. That is not how law works. Existing constitutional structures do not collapse because a foundational instrument is found to be evidentially defective. The question of what follows from such a finding is itself a legal and political question.

What the series argues is a provenance question: the foundational instruments have not been examined with the tools routinely applied to other historical documents. When they are, the root of the chain becomes contestable rather than self-evident. A legal system that cannot examine the evidentiary foundation of its own authority claims is not thereby excused from the obligation. It is simply overdue.

The Mabo analysis

Mabo v. Queensland (No. 2) (1992) is the clearest domestic example of a court arriving at the threshold of the foundational question and choosing not to cross it.

Justice Brennan, writing for the majority, was explicit: the Court would “not fracture a skeletal principle of our legal system” by questioning the acquisition of sovereignty. The majority recognised native title — a significant development — but it affirmed Crown sovereignty as beyond the scope of review. The foundational question of how that sovereignty was acquired, and whether the acquisition rested on legitimate authority, was declared out of bounds.

The phrase “skeletal principle” is precise and revealing. A skeletal principle is one so embedded in the structure of the legal system that questioning it would require the system to question itself. The Court was acknowledging, in effect, that the foundational question cannot be answered by the structure that rests on the foundation. This is coherent as a matter of legal pragmatism: the judiciary operates within the constitutional order, not above it, and cannot unilaterally dismantle the constitutional framework from which its own authority derives.

It is also, in a legal-philosophical sense, a confession that the foundation has never been examined. “We will not fracture a skeletal principle” is not the same as “the skeletal principle is sound.” The Court did not find the foundation legitimate. It found it too consequential to examine.

What a complete provenance examination finds

If you apply standard historical document analysis to the sovereignty chain — the same methods applied to any disputed medieval charter, forged decretal, or contested grant of title — here is what the examination finds at each link.

At the Pauline layer: Romans 13:1–7, the passage providing the theological warrant for divinely instituted temporal authority, does not pass standard authenticity tests. It interrupts its context structurally, is absent from the earliest counter-canon, first appears in polemical literature produced by the party with the clearest institutional interest in it, and moves in a direction inconsistent with the surrounding authenticated Pauline material.

At the ecclesiastical layer: the papal bulls claim authority descending from Peter’s commission. That commission (Matthew 16:18–19) is absent from the parallel gospel accounts, uses vocabulary inconsistent with its supposed setting, and is not cited by the early writers who would most have needed it if it were genuine.

At the legal layer: *Johnson v. M’Intosh* incorporates the Doctrine of Discovery without examining the theological warrant behind it. The court treats the doctrine as established international practice, not as a claim requiring examination at its root.

At each layer, the examination was not performed. The authority was assumed. What the series argues is that the assumption, at each level, rests on instruments that have not been subjected to the same evidentiary scrutiny applied to other documentary chains of authority.

What the series is doing

This is not written by constitutional lawyers, and it is not legal advice. It is written to make the evidentiary record accessible to a reader who can follow an argument about documentary sources and their chain of authority.

For judges and legally trained readers, the point is not that existing constitutional law is automatically void. The point is narrower and more evidentiary: the foundational chain has not been examined at its deepest documentary source with the rigour normally applied to disputed instruments of authority.

Volume 3 — The Chain from Scripture to Sovereignty traces the chain in full: from the interpolated Pauline text through the anti-Marcionite literature through the medieval papacy through *Laudabiliter* through *Romanus Pontifex* and *Inter Caetera* through *Johnson v. M'Intosh* through Australian constitutional law. Each link is examined as a documentary source, with primary documents cited.

Volume 2 — How Paul's Letters Were Edited sets out the textual evidence in full: the methodology, the manuscript record, the patristic silence evidence, the writing-style analysis, and the verse-level adjudication of the Pauline corpus.

Volume 1 presents the argument in brief for a reader who wants the structure before the evidence.

Companion A sets out the per-verse classification of every verse in Paul's seven authenticated letters, with the grounds for each classification. It is the equivalent of an exhibit list.

The question this series puts to a legally trained reader is not: do you believe in God? It is: have the foundational instruments of the sovereignty claim been examined with the rigour you would apply to any other documentary chain of title? The evidence suggests they have not.

A note on the record

The full dataset is public. Every verse classification in Companion A carries its grounds: the signal codes that fired, the confidence calculation, the scholarly sources cited. The signal weights are documented. The methodology is reproducible.

This is not peer-reviewed in the conventional sense. It is something more directly useful for a legally trained reader: it is verifiable. A reader who wants to examine the chain of reasoning rather than accept the conclusion has everything needed to do so. There is no institutional filter between the evidence and the reader. The exhibit list is open, the methodology is stated, and the counter-cases are in Appendix H of Volume 3.

Most academic work on questions like this is produced inside institutions, published behind paywalls, and accessible only to those with the right credentials. This series made a different choice, for the same reason a court makes its reasoning public: authority that cannot be examined is not the same as authority that has been examined and held.

This document summarises the legal-historical and textual argument developed in Volumes 1–3 of the By What Authority series. Scholarly citations, methodology, and full evidence are in those volumes.